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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,386	06/21/2006	Marcus Hartvigsson	ABE-38790	1349
116 7590 05/06/2010 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
EXAMINER				
CORMIER, DAVID G				
ART UNIT		PAPER NUMBER		
1711				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,386

Applicant(s)

HARTVIGSSON, MARCUS

Examiner

DAVID CORMIER

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG-08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Interval Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2010 has been entered.

Response to Amendment/Arguments

2. Claims 1-7, 8, and 9 are pending. Claim 1 has been amended.
3. Claims 1-7, and 9 was rejected under 35 U.S.C. 102(b) as being anticipated by Payzant (US 5,937,879). Claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant. Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant in view of Taylor, Jr. et al. (US 5,660,195). Applicant's arguments have been fully considered but they are not persuasive.
4. Specifically, Applicant argues that Payzant does not disclose that the coarse sieve, when in a second position, is raised above the flow of liquid such that the rinsing liquid cannot pass through the coarse sieve. First, the meaning of "rinsing liquid cannot pass through the coarse sieve" is unclear and is addressed further in the 112 rejection below. In view of the specification, it appears that some rinsing liquid would be capable of passing through the coarse sieve. Applicant's specific argument as to why Payzant does not teach this limitation is that when the

coarse sieve 144 is in a raised position (Figure 6), liquid flowing into opening 140 must pass through the coarse sieve 144 (col. 6, lines 44-49). This is unpersuasive because this is a functional limitation which the apparatus is capable of performing. If the apparatus of Payzant is capable of performing the function, it meets the claim. If a low flow rate of rinsing liquid is used, and assuming no splashing of liquid, then no liquid would flow into opening 140. The liquid **could** first flow into the screen 138 and **could** bypass the coarse sieve 144. The apparatus of Payzant is capable of performing this function. The rejection is maintained.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-7, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Regarding Claim 1, the phrase “wherein the second position of the coarse sieve is located above the flow of rinsing liquid such that the rinsing liquid **cannot** flow through the coarse sieve” is indefinite (emphasis added). It is unclear how this phrase should be interpreted. The specification (Figure 4; page 3, lines 23-30) and Claim 4 indicates that rinse liquid can flow through at least a portion of a coarse sieve. Furthermore, there is no disclosure of any means which would prevent **any** rinse liquid from entering the top of the coarse sieve when the coarse sieve is in a raised position. During a rinsing cycle, at least some of the spraying, splashing, and misting liquid would enter the top of the coarse sieve. For examination purposes, the phrase

"rinsing liquid cannot flow through the coarse sieve" will be interpreted as "some of the rinsing liquid does not flow through the coarse sieve." Amendment or clarification is required.

8. Claim 5 recites the limitation "the collecting part" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Payzant (US 5,937,879).

11. Regarding Claim 1, Payzant discloses a filter system for a household dishwasher comprising a wash space (24) and a liquid circuit that comprises a coarse sieve (144) and one or several fine filters (138), the coarse sieve being movable between a first position and a second position (see Figures 5 and 6) with the aid of actuating means, "solenoid" (182; col. 6, lines 5-44) arranged in the dishwasher characterized in that a part of the circulating liquid in the first position of the coarse sieve flows through a collecting part of the coarse sieve (the "collecting part" could be construed as the upper portion of the perforated part of the coarse sieve) whereas the circulating liquid in the second position of the coarse sieve bypasses said collecting part (such as when the sieve is raised in the upper position of Figure 6 and liquid flows through the screen, 138, and then in and around the bottom portion, but not through the top portion, of the perforated part of the coarse sieve).

12. Regarding Claim 2, the course sieve being in certain positions during certain dishwashing cycles is considered to be intended use of the apparatus, as taught by Payzant, and is not being given patentable weight. The claimed intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

13. Regarding Claim 3, Payzant discloses that the course sieve has a cylindrical body which is open at the top and has a bottom (Figure 6; col. 5, lines 58-61).

14. Regarding Claim 4, in the second position (the raised position of Figure 6), the bottom portion of the perforated part of the course sieve is considered to be a "filtering area" (i.e. that portion which is never covered by the collar, 142).

15. Regarding Claim 5, the top portion of the perforated area of the course sieve, such as the top half of the sieve, is considered a collection portion, which has a circular/cylindrical wall and a bottom (the "bottom" of the collection portion could be interpreted to be the plane which separates the "collection portion" from the "filtering area") with the filtering area being an extension of the circular wall part below said bottom.

16. Regarding Claim 6, Payzant discloses electrical circuitry for controlling the machine (Figure 7; col. 7, lines 4 and 5), the circuitry also controls the solenoid, 182 (col. 7, lines 48-53).

17. Regarding Claim 7, Payzant discloses a liquid collecting container divided into a first chamber, "basin" (108) and a second chamber (the bottom portion of the wash space directly at the top of the coarse sieve) divided by the fine filter (138), the first chamber communicating with a circulation pump whereas the second chamber is arranged to receive the coarse sieve.

18. Regarding Claim 9, because no orientation of the dishwasher has been specified, the actuating means, "solenoid" (182) of Payzant could be construed as being below the coarse sieve (see Figure 5).

Claim Rejections - 35 USC § 103

19. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

20. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant (US 5,937,879).

21. Payzant is relied upon as applied to Claim 1. The actuating means of Payzant is disclosed as being above the coarse sieve (Figure 5), not below the coarse sieve as claimed. It would have been obvious to one of ordinary skill in the art to move the solenoid to below the coarse sieve because this would simply be a rearrangement of parts, which is considered to be an obvious design choice. See MPEP 2144.04 (VI) (C).

22. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payzant (US 5,937,879) in view of Taylor, Jr. et al. (US 5,660,195).

23. Payzant is relied as applied to Claim 9. Payzant does not expressly disclose that the actuating means is a wax actuator.

24. Taylor, Jr. discloses a dishwasher which uses a wax actuator (32) for actuating a valve. The wax actuator imparts a gradual movement to an element, such that movement of the element is gentle and quiet (col. 4, lines 6-30).

25. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the solenoid of Payzant with a wax actuator, such as in Taylor, Jr., which would yield the predictable result of having an effective actuation means that moves gently and quietly.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CORMIER whose telephone number is (571) 270-7386. The examiner can normally be reached on Monday - Thursday 8:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/
Supervisory Patent Examiner, Art Unit
1711

/DGC/

Application/Control Number: 10/550,386

Page 8

Art Unit: 1711

David Cormier

05/04/2010